

October 13, 2016

Clerk, U.S. Bankruptcy Court

IT IS ORDERED AND NOTICE IS GIVEN that unless within 23 days of the date in the FILED stamp above an interested party BOTH: (1) files a written objection to the Motion below, SETTING FORTH the specific grounds for such objection, with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with 3 or 4, at 1001 SW 5th Ave. #700, Portland OR 97204; OR, if it begins with a 6 or 7, at 405 E 8th Ave #2600, Eugene OR 97401), AND (2) serves a copy on the movant and any attorney for the movant at the service address(es) below, the movant will thereafter settle and compromise the matter upon the terms below and the settlement will be deemed approved without further order.



ANN AIKEN
U.S. District Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re)	
)	
Berjac of Oregon,)	
)	
<u>Debtor(s)</u>)	Case No. <u>12-63884-tmr7</u>
)	
THOMAS A. HUNTSBERGER, Trustee,)	Adv. Proc. No. <u>14-06168-tmr</u>
)	
)	MOTION AND NOTICE OF INTENT
)	TO SETTLE AND COMPROMISE
Plaintiff(s))	ADVERSARY PROCEEDING,
)	AND ORDER THEREON
)	
V.)	
)	
UMPQUA HOLDINGS CORPORATION dba UMPQUA)	
BANK, an Oregon corporation; et al.,)	
)	
<u>Defendant(s)</u>)	

The undersigned trustee, **Thomas A. Huntsberger**, moves to settle and compromise the above adversary proceeding upon the following terms:

The Trustee sued Umpqua Holdings Corporation dba Umpqua Bank ("Umpqua"), along with additional defendants Pacific Continental Corporation dba Pacific Continental Bank for itself and as successor-in-interest to Century Bank, Summit Bank, and Jones & Roth on several legal theories wherein the Trustee seek to avoid tens of millions of dollars of transfers by Berjac to the defendants in furtherance of an alleged Ponzi scheme. (The Trustee's Litigation). The Trustee's Litigation was transferred by withdrawal of reference to U.S. District Court, Case No. 6:14-cv-01851-AA where it is currently pending. The Trustee's claims against Summit Bank were settled and the claims against Summit Bank were dismissed. A number of Berjac investors also filed a Class Action lawsuit in Multnomah County Circuit Court on behalf of all Berjac Investors against the same defendants, other than Summit Bank, and certain members of the Holcomb family, for tens of millions of dollars in damages for violation of Oregon's Securities Law and Aiding Breach of Fiduciary Duty (the Class Action Case). The Class

Action Case is pending as case number 13-08-12201.

The Trustee and the Class Action Plaintiffs have now agreed to settle and compromise all claims brought against Umpqua in the Trustee's Litigation and the Class Action Case on the following terms:

1. Umpqua will pay a total of \$11,000,000.00 in settlement. 60% of the settlement amount (\$6,600,000.00) will be paid to the Class Action Plaintiffs for distribution through the Class Action case and 40% of settlement amount (\$4,400,000.00) will be paid to the Trustee for distribution through the bankruptcy estate.
2. The Class Action Plaintiffs and the Trustee will dismiss all claims brought against Umpqua in the Class Action Case and the Trustee's Litigation.
3. The attorneys for the Class Action Plaintiffs will apply for approval of a contingent attorney fee not to exceed 30% of the gross settlement award in the Class Action Case and to employ the firm of Transeth & Associates as Claims Administrator in the Class Action case at an estimated cost of \$150,000.
4. The Trustee's attorneys, the law firm of Kent & Johnson, will apply for approval of a contingent fee award not to exceed 20% of the gross settlement award paid to the Berjac bankruptcy estate.
5. Umpqua will cooperate with the Trustee in the Trustee's Litigation and with the Class Action Plaintiffs in the Class Action Case by providing documents and making witnesses available for depositions and trial upon reasonable notice and without subpoena.
6. Umpqua will assign to the Class Action Plaintiffs or the Trustee, whichever is appropriate, any claims it holds against Jones & Roth.
7. Umpqua entered into a written settlement agreement with the Trustee in the Trustee's Litigation and with the Class Action Plaintiffs in the Class Action Case.
8. The settlement agreement with the Trustee will provide for mutual releases of claims and that Umpqua will withdraw any claims filed against the bankruptcy estate.
9. The parties will cooperate in good faith to achieve all terms of settlement of the Trustee's Litigation and the Class Action Case.
10. The settlement must be approved by the Multnomah County Circuit Court in the Class Action Case and by the U.S. District Court in the Trustee's Litigation. The approval of the settlement in the Class Action Case is subject to a number of conditions and procedures which do not pertain to approval of the settlement in the Trustee's Litigation. The settlement will be voidable if not approved by both courts.

In the Trustee's business judgment, due to the uncertainty of the outcome of the litigation and the ongoing costs of pursuing the estate claims against Umpqua, the proposed settlement and compromise is fair and equitable and in the best interests of creditors and the bankruptcy estate.

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DATE: 10/11/16

/s/ Thomas A. Huntsberger

Trustee

Service Address: 870 W. Centennial Blvd.

Springfield, OR 97477

Name of Attorney for Trustee: Brent G. Summers, OSB #824060

Service Address: 2501 SW First Ave., Suite 390

Portland, OR 97201